

**UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION**

**In re:**

**ASNACO, LLC,**

**Case No. 3:11-bk-5902-JAF**

**Debtor.**

**Chapter 7**

**TRUSTEE'S MOTION FOR ORDER AUTHORIZING  
SALE OF THE ESTATE'S RIGHT, TITLE, AND INTEREST IN REAL PROPERTY  
FOR CREDIT BID SUBJECT TO HIGHER AND BETTER OFFERS**

Valerie Hall Manuel, as Chapter 7 Trustee of the Estate of Asnaco, LLC, by and through her undersigned counsel, pursuant to 11 U.S.C. §363, and Rules 6004 and 9014, F.R.B.P., and Local Rules 6001-1 and 2002-4, files this Motion for Order Authorizing Sale of the Estate's Right, Title, and Interest in Real Property for Credit Bid Subject to Higher and Better Offers, and states:

**JURISDICTION**

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 157 and 1334.
2. This is a core proceeding pursuant to 28U.S.C. §157(b)(2)(N).

**BACKGROUND**

3. The Debtor filed a voluntary petition for relief under Chapter 7 of the Bankruptcy Code on August 9, 2011.
4. On August 10, 2011, the case was transferred to the Jacksonville Division of the United States Bankruptcy Court for the Middle District of Florida.
5. Valerie Hall Manuel was appointed as the Chapter 7 Trustee.

### **THE REAL PROPERTY**

6. As of the petition date, the Debtor is the fee simple owner of numerous condominium units in the development known as City Marketplace. The legal description of the Real Property (the “Property”) is set forth on the attached **Exhibit A**.

### **INTERESTS AGAINST THE PROPERTY**

7. Prior to the petition date, on October 5, 2010, the Circuit Court for Flagler County, Florida, entered a Final Summary Judgment of Foreclosure in favor of Branch Banking and Trust Company (“BB&T”) and against the Debtor, foreclosing BB&T’s mortgage against the Property in the amount of \$12,934,195.98, plus interest at the rate of 6% per year (the “Judgment”). As of the petition date, the total amount owing under the Judgment was \$13,586,929.92.
8. Although Debtor has filed an appeal of the Judgment with the Fifth District Court of Appeals, the Trustee has agreed to dismiss the appeal in exchange for \$50,000.00 being paid by BB&T to the Estate. Pursuant to this agreement with BB&T, the Trustee has agreed to sell the Property as requested in this Motion. Concurrent with the filing of this Motion, the Trustee has filed a Notice of Intent to Compromise with BB&T.
9. If BB&T is the successful bidder as a result of its credit bid, it shall take title to the Property subject to any claim(s) by Cypress Point Owners Association, Inc., and City Walk Commercial Condominium Association, Inc.
10. The Trustee requests an order from this Court approving a sale of the Property free and clear of all liens, claims, and encumbrances, except as stated in paragraph 9, under 11 U.S.C. § 363 at a date and time to be separately noticed by the Trustee by a

Notice of Public Auction and Sale circulated to all interested parties pursuant to Federal Rules of Bankruptcy Procedure 6004(a), and M.D. FLA. L.B.R. 2002-4.

11. The Property is being sold AS IS, WHERE IS with no warranties of any type being given by the Trustee.
12. The successful bidder shall be responsible for the payment of all fees, costs and taxes arising from or related to the transfer of the Property.

### **BIDDING PROCEDURES**

13. BB&T shall be entitled to credit bid in an amount up to the full Judgment amount.
14. Any party other than BB&T wishing to submit an offer for the Property shall be required to tender to the Trustee a \$100,000.00 non-refundable bid deposit in currently available funds at least five (5) business days prior to the sale together with evidence satisfactory to the Trustee of the financial ability to close on sale of at least \$5,000,000.00. A party who has complied with requirements shall be a Qualified Bidder. In the event that a Qualified Bidder is not the successful bidder, the deposit shall be refunded to the Qualified Bidder. If the Qualified Bidder is the successful bidder but fails to close on the sale, the deposit will be forfeited and paid to the Estate.
15. Bidding shall be conducted in \$25,000.00 increments with the minimum bid of \$5,000,000.00.

### **CARVE OUT**

16. Whether or not BB&T is the successful bidder, BB&T shall pay the estate \$10,000.00 as compensation to the Estate for conducting this sale.

### **CLOSING**

17. The closing for this sale shall take place within three (3) days following the entry of an order from the Court approving the sale. If the successful bidder is not BB&T, then the successful bidder shall pay the full bid price, less the \$100,000.00 deposit, in immediately available funds at closing. If the successful bidder is not BB&T and does not close on the sale as set forth herein, then the Trustee will accept BB&T's credit bid of \$5,000,000.00 and transfer the Property to BB&T.
18. Within 30 days after the sale, the Trustee and buyer will consult on the assumption or rejections of leases.

### **SOUND BUSINESS JUSTIFICATION FOR THE SALE**

19. The Trustee believes that sound business justification for this proposed sale exists. The Trustee concedes that the Property is worth less than the Judgment owing to BB&T. Without this sale and the compromise of the appeal of the Judgment, this would be a no asset case with no distribution to any creditors. This sale along with the compromise of the appeal will result in a meaningful distribution to creditors.

### **GOOD FAITH FINDING**

20. The Trustee submits that the Trustee and BB&T have at all times acted in good faith and therefore request that this Court make a finding that BB&T qualifies as a good faith purchaser under 11 U.S.C. § 363(m) if it is the successful bidder at the sale.

WHEREFORE, the Trustee requests this Court to enter an order granting the Motion, approving the bid procedures, scheduling a final sale hearing, and granting such other and further relief as is appropriate.

DATED this 9<sup>th</sup> day of September, 2011.

FRIEDLINE & McCONNELL, P.A.

/s/ Jerrett M. McConnell

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Attorney for the Trustee

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing was furnished to Thomas M. Scaglione, registered agent for T-Con Group, Inc., 160 Cypress Point Pkwy, Suite C217, Palm Coast, FL 32164; John P. Jackson, registered agent for Envirocare Construction, Inc., 3626 Donna St., Pt. Orange, FL 32129; Lawrence S. King, registered agent for Daytona Fire & Safety Equipment, Inc., 179 Carswell Ave., Holly Hill, FL 32117; all parties in interest on the mailing matrix electronically or by U.S. Mail, postage pre-paid this 9<sup>th</sup> day of September, 2011.

/s/ Jerrett M. McConnell

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Attorney